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Supreme Court of the United States

OCTOBER TERM, 1963

No. 737

J.J. (JAKE) HARDAWAY and KATIE MAE HEIDELBERG, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

REPLY TO BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. J. (JAKE) HARDAWAY,
Petitioner

KATIE MAE HEIDELBERG,
Petitioner

Pro se (pending engagement of Washington counsel)

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Petitioners, asking consideration of their reply to the brief of respondent in opposition to their petition, show and state,—

1. (Respondent 5)

Respondent cites authority to support the argument that no harm was done below to these petitioners in view of careful instructions. The cited authority correctly presents the rule of law on indictments as evidence, but that, with respect, is not the complaint of petitioners.

They complain that the things done below deprived them of the very protection which respondent correctly urges they have under the law as properly interpreted. These are the things:

(a) Testimony from Social Security Officers as to false claims disallowed in cases of Bartee and Bevly. Thus

setting the stage for prejudice of petitioners, the returns, themselves, were admitted, while the taxpayers were dead.

(b) Then with those taxpayers named in the indictment as conspiring for fraudulent claims, and the testimony against propriety of their claims, the entire package was given to the jury for consideration in the jury room.

Petitioners note, with respect, that the instruction on indictments did not mention the returns (which were accompanying the very indictment that condemned them). That is the heart of the misery dealt to them by the combination of indictment, testimony and returns. All were objects of petitioner objections.

The authorities cited by respondent appear to deal only with the fact of indictment as evidence, and not a back-door corroboration of it.

The authorities cited, with deference, do not reach the complaint of petitioners.

2. (Respondent 6)

Petitioners note that respondent has skirted the issues presented by their petition respecting the Maggie Cotton return and instructions.

First, they recall that they objected to the entire body of the Maggie Cotton charge, after failing to achieve change to accord with the law.

Next, there is to be considered that Federal judges know the law, and not just such portions as they may be requested to apply on instructions. A part of that body of law so known is the presumption reflected from the cited provisions of the Social Security Act. Assuming *arguendo* that respondent is correct in the rationalizing on gross-net income (Br. 8) the rationale collapses onto its own conclusion. The Social Security provisions cited will deem $1200.00 as the net income, regardless of gross, if the gross be less than $1800.00.

Maggie Cotton said as a Government witness that what she wrote down in the book was "right" and nobody told her what to write. If the prosecutor wanted to say it was wrong, and that some one did tell her, the credibility there was a jury question, from the moment she said it.

That, however, could not get to the jury because the Court, "as a matter of law", said it was wrong. It was not redeemed by his observation that such was merely his "opinion", because he already had told the jury to take the law from him. The law *is* the opinion of the judge, and never any more.

The moment the Court said "as a matter of law" the jury was invaded and lost its assigned task—not to say right—to find the facts on disputed evidence.

Petitioners note that respondent cites no authority for the views expounded in this portion of the brief in opposition. The authority cited is on the question of fair comment, not on guilt as a matter of law where a jury is chosen to determine that guilt.

3, 4, 5, 6. (Respondent 9-12)

Petitioners rely on their brief respecting the points discussed in the brief of respondent. They, thus, reaffirm their showing that justice will not be served except by the granting of this writ

Respectfully submitted,

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Petitioner

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